U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

B5

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 08 2006

EAC 05 045 52959

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as a research scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, counsel addresses some of the director's concerns. For the reasons discussed below, however, the petitioner has not overcome the director's basis of denial. Specifically, as of the date of filing, the petitioner had yet to publish his work. The record lacks evidence that the petitioner had otherwise influenced the field. At best, the petition was filed prematurely, before the scientific community's reaction to the petitioner's work could be gauged.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The petitioner holds a Ph.D. in microbiology from the University of Vermont. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, medical research, and that the proposed benefits of his work, improved understanding of Spinal Muscular Atrophy (SMA), would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

The director concluded that the reference letters were mostly from the petitioner's local colleagues and that the record lacked evidence of the petitioner's impact in the field through citations. The director rejected counsel's comparison of the number of articles on cancer or AIDS with the considerably smaller number of articles on the "smn protein complex" as demonstrating that SMA

research is such a small area of expertise that it is difficult to demonstrate a wide impact. The director concluded that counsel was comparing a very specific research focus with extremely broad research areas. On appeal, the petitioner submits the number of articles on SMA altogether and a new letter from a professor at the University of Vermont.

Initially, counsel asserted that a waiver of the labor certification process in the national interest is warranted because the process does not lend itself to the petitioner's area of research; specifically, a minimally qualified person would not be expected to carry out and perform to the same degree as a superbly qualified individual. Counsel does not sufficiently distinguish the petitioner's area of research from medical research in general. It is the position of Citizenship and Immigration Services (CIS) to grant national interest waivers on a case-by-case basis, rather than to establish blanket waivers for entire fields of specialization, such as medical researchers. *Id.* at 217.

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

After obtaining his Ph.D. from the University of Vermont, the petitioner began working for Dr. [redacted] at the University of Pennsylvania under the auspices of the [redacted] Medical Institute (HHMI). Dr. [redacted] asserts that the petitioner's "extensive background in nucleic acids, biochemistry & molecular biology contributes to our ongoing research of the SMN complex which is at the center of the childhood disease: Spinal Muscular Atrophy (SMA)." Dr. [redacted] continues that the petitioner's analysis of the SMN RNA interaction and complete composition of SMB complex is important for understanding SMN. Dr. [redacted] concludes that the petitioner's research "potentially" will have a national and international effect leading to a better understanding of the chemicals involved in SMA and possibly leading to a test or cure.

Dr. [redacted] an adjunct professor at the University of Pennsylvania and former Research Vice President at Merck Research Laboratories, asserts that he met the petitioner when he joined Dr. [redacted] laboratory. He finds the petitioner's "expertise in molecular biology and nucleic acids to be extremely important in our search for a viable compound to aid those with Spinal Muscular Atrophy (SMA)." Dr. [redacted] characterizes the petitioner as "well-trained and dedicated" and asserts that his work "will" lead to an improved understanding of SMN.

The petitioner resubmitted a letter from [redacted] a senior visa specialist with HHMI, originally submitted in support of HHMI's nonimmigrant petition in behalf of the petitioner. Ms. [redacted] asserts that the petitioner is "uniquely qualified" for his position based on his education and research

skills. Special or unusual knowledge or training, while perhaps attractive to the prospective U.S. employer, does not inherently meet the national interest threshold. *Id.* at 221.

None of the references discussing the petitioner's work with Dr [redacted] assert that this work has been peer-reviewed and published.

At the University of Vermont, the petitioner worked in the laboratory of Dr [redacted]. Dr. [redacted] explains that the petitioner's doctoral research "focused on determining the molecular mechanism of the inhibition of viral replication by engineered hairpin ribozymes." In carrying out this research, the petitioner was not satisfied with the laboratory's expression system and initiated a collaboration with Dr [redacted] at Washington University to develop a new expression system. In a second letter, Dr. [redacted] deemphasizes the collaboration, asserting that Dr. [redacted] only knows the petitioner through "professional communications, specifically email exchanges, scientific manuscripts and published scientific papers. They have never met or even conversed on the telephone." As of the date of Dr. [redacted] first letter, however, the petitioner had not published any scientific papers. Dr. [redacted] explains that the petitioner's doctoral results confirmed that "the antiviral effect is due to the action of the ribozyme at the intended target and indicate that the full inhibition observed is a consequence of both ribozyme-catalyzed RNA cleavage and antisense activity, working in an additive fashion." Dr. [redacted] concedes, however, that the results had only been accepted for publication and had yet to be disseminated in a peer-reviewed journal as of the date of his letter, November 9, 2004.

Dr. [redacted] asserts that the remaining letters from faculty at the University of Vermont reflect the opinions of faculty with only professional interactions with the petitioner and no interest in his career. While this assertion may be true, the letters merely praise the petitioner's experience and skills. They fail to explain how the petitioner's results have impacted the field beyond his collaborators. Similarly, Dr. [redacted] asserts generally that the petitioner's work "involves important and essential contributions to the advancement of the profession" but fails to identify specific contributions and how they have influenced the field.

In response to the director's request for additional evidence, the petitioner submitted the results from three PubMed searches reflecting 1,673,897 articles that mention "cancer," 94,419 articles that mention "AIDS and HIV" and only 136 articles that mention "SMB protein complex." On appeal, the petitioner submits a PubMed search for "Spinal Muscular Atrophy" resulting in 2,477 articles. Dr. [redacted] a research assistant professor at the University of Vermont asserts that the petitioner's article was published in March 2005 and, thus, it is too early to expect citations.

While the petitioner lists presentations on his curriculum vitae and a submitted article, the record contains no evidence that, as of the date of filing, the petitioner had authored any published article in a peer-reviewed publication. The petitioner must demonstrate his eligibility as of the filing date, in this matter December 6, 2004. As of that date, the petitioner's work had yet to be published in a peer-reviewed journal and disseminated within the field. Thus, without evidence that the petitioner was

otherwise able to influence the field prior to being published, we cannot evaluate the significance of his work as perceived in the field beyond his local colleagues.

As stated above, the petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. The petitioner is respected by his colleagues and has made useful contributions in his field of endeavor. It can be argued, however, that most research, in order to receive funding, must present some benefit to the general pool of scientific knowledge. It does not follow that every researcher working with a grant inherently serves the national interest to an extent that justifies a waiver of the job offer requirement. Without evidence that the petitioner had even published his results as of the date of filing or comparable evidence that his work has been disseminated beyond his local colleagues, the petitioner cannot establish the necessary past history.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.